

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KIEWIT CONSTRUCTORS, INC.,

Plaintiff,

v.

ORDER
07-CV-121A

FRANBUILT, INC.,
MICHAEL BURNS,
THOMAS BARNES, and
FIRST NIAGARA BANK,

Defendants.

The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1)(B). On October 4, 2007, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that plaintiff Kiewit Constructors, Inc.'s motion to dismiss the counterclaims of defendant Franbuilt, Inc. be granted insofar as it seeks to dismiss Franbuilt's counterclaims and the entry of a default judgment on liability against Franbilt, and otherwise be denied as being premature.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, plaintiff Kiewit Constructors, Inc.'s motion to dismiss the counterclaims of defendant Franbuilt, Inc. is granted insofar as it seeks to dismiss Franbuilt's counterclaims and the entry of a

default judgment on liability against Franbilt, and otherwise denied as being premature.

The case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: December 14, 2007